

# **A ROLE FOR LEGAL SERVICES IN THE FIGHT FOR TELECOMMUNICATIONS AND COMPUTER ACCESS FOR LOW INCOME COMMUNITIES**

# **A ROLE FOR LEGAL SERVICES IN THE FIGHT FOR TELECOMMUNICATIONS AND COMPUTER ACCESS FOR LOW INCOME COMMUNITIES**

By Ellis Jacobs

## **I. Introduction**

Telecommunications technology has emerged as an important tool for community development, political involvement, and personal expression. But, as is now well known, this technology is not available to all. While the United States has a highly developed telecommunications system, many families, particularly minority and low-income families, do not have access to basic phone service. Many more such families do not have access to the Internet, and there is evidence that telecommunication companies have delayed the installation of the infrastructure needed for more advanced services in low-income neighborhoods.

In response to these problems, and sparked by the potential benefits of communications technology, low-income and minority community organizations have become involved in cases before the Federal Communications Commission and state public utility commissions in order to increase telephone subscribership, bridge the "digital divide," and stop infrastructure redlining.

These efforts have met with some success and have afforded the community organizations the opportunity to learn more about the precise nature of these problems, the type of policies and programs that can effectively address the problems, and how to use the regulatory apparatus to promote solutions.

This article focuses on the experience of one such low-income African American community organization in Ohio, the Edgemont Neighborhood Coalition ("Edgemont"). Edgemont has been a national leader in this work since it became involved in its first

telecommunications case in 1993. Since then, Edgemont's advocacy has helped low-income families get and keep telephones, created community computer centers where residents of underserved communities can go for internet access and training, and begun to fashion remedies for inequitable telecommunications investment.

## **II. The Problems**

We are just beginning to learn about the range of problems and possibilities that the recent explosion in information technology presents for efforts to achieve equality and justice. A few of the problems, however, have already become fairly evident.

Much has been written about the “digital divide.” An article, in the May 2003 Clearinghouse “The Future of Technology in Legal Services: A Time for New Advocacy (Gabrielle Hammond and Ellis Jacobs) provides an excellent summary of the latest research. To recap here, briefly, income and race remain the two main factors that determine use of the internet. High income households (over \$75,000) are three times as likely to use computers and the internet as low-income households (under \$15,000). African Americans and Hispanics use the internet at rates significantly less than whites.<sup>1</sup>

The digital divide also has an infrastructure aspect. Broadband infrastructure to meet advanced need has become available throughout much of the country. Cable companies use cable modems to provide this bandwidth, and phone companies are providing it by installing equipment that makes digital subscriber line service (DSL) available over existing lines.

The FCC’s latest report on availability of broadband shows that while only 7% of households subscribed to advanced broadband services as of June 2001, these services are not being rolled out at an equal rate in all communities. In fact, 96% of the wealthiest one-tenth of zip codes had broadband available while it was only available in 59% of the poorest zip codes.<sup>2</sup>

The FCC identified this problem as early as 2000 when it issued a report which found that rural Americans, inner city consumers, low-income consumers, minority consumers, and tribal areas were, "particularly vulnerable of not having access to advanced services if deployment is left to market forces alone."<sup>3</sup> In other contexts, like banking, problems like this have been labeled "redlining".

Of course, problems with access to modern communications do not apply just to the internet and advanced services. Many low-income families in the United States still do not have basic telephone service. While 94.1% of all American households have a telephone, the rate of subscribership varies by state (from 87.2% to 97.5%) and decreases in all states as household income drops. Nationally, twenty-five percent of households with incomes below \$5000 do not have telephone service, and telephone penetration does not reach the national average until household income reaches \$20,000. Further, African American and Hispanic households are almost three times as likely as white households not to have phones.

Not having a telephone poses significant problems. It creates a barrier to getting timely medical attention and makes it difficult to report other emergencies such as fire or crime. It even jeopardizes access to public assistance programs since more and more social service agencies depend on the telephone to provide outreach, consultation, and, increasingly, intake and referral functions for a host of essential services. The lack of a telephone is also a barrier to employment. Jobs are frequently offered and accepted over the telephone, and not having a telephone makes it harder to keep a job.

In light of these problems, it might be surprising to know that, while the United States has no laws which require universal health care or housing, it has long been the policy of the United States to pursue "universal service" in the area of telecommunications. The Communications Act

of 1934, which created the Federal Communication Commission, proclaimed that the goal of telecommunication regulation was, "to make available, so far as possible, to all the people of the United States, a rapid, efficient, nationwide and worldwide...communication service with adequate facilities at reasonable charges...for the purpose of promoting safety of life and property through the use of ...communications."<sup>4</sup> When the Act was substantially amended in 1996, one of the few public interest victories was the expansion of the section on universal service.

This special treatment for telecommunications comes from the "positive externalities" associated with it. A telephone is only valuable if there is someone to call and the more people you can call, the more valuable your phone is. Of course, it is a long leap from having the goal of universal service to actually achieving it.

### **III. A Grassroots Response**

The Edgemont Neighborhood Coalition is a community organization located in the Edgemont neighborhood of Dayton, Ohio. Dayton is a city in southwest Ohio that lost tens of thousands of good-paying jobs during the de-industrialization of the 1970s. Its economy still has not fully recovered.

Edgemont is an African American neighborhood with high poverty and unemployment rates. Linda Broadus, Edgemont's executive director, began thinking about the possible harms and benefits that could come from telecommunications during the time in the early 1990s when the Telecommunications Act was being debated in the United States Congress.

Edgemont retained the Legal Aid Society of Dayton (which established the Telephone and Technology Access project to provide this representation), and together, they began looking for proceedings before the Federal Communications Commission (FCC) and the Public Utilities

Commission of Ohio (PUCO) where the issues of telecommunications access, economic development and educational opportunities could be addressed.

The FCC is the federal administrative agency responsible for interstate telecommunication policy. The PUCO is the Ohio agency responsible for intrastate policy in Ohio. Each State has an agency with responsibilities similar to those of the PUCO.

Representing community organizations before these administrative agencies presents a special set of challenges and opportunities. The PUCO, for example, is an oddly contradictory entity. Its five Commissioners are political appointees but they are also students of utility regulation and are open, within certain parameters, to being convinced by sound arguments. They rely on a very knowledgeable staff with whom advocates can develop working relationships. Commissions like the PUCO function quasi-legislatively, writing rules, regulations and policies of general application, and quasi-judicially, deciding applications and complaints. Generally, parties which will be affected by the outcome of a proceeding will be granted the right to intervene and fully participate in that proceeding.

The first case in which Edgemont intervened occurred in 1993 when Ameritech Ohio filed an alternative regulation case with the PUCO. Ameritech Ohio is part of Ameritech, the Baby Bell which, in 1993, served Ohio, Michigan, Illinois, Indiana and Wisconsin. Ameritech Ohio is the largest local phone company in Ohio and serves most of the major metropolitan areas in the state, including Dayton.

Ameritech Ohio's application for alternative regulation was part of the company's effort to change the way it was regulated in Ohio. Ameritech, like most utilities, was subject to rate-of-return regulation. Using rate-of-return regulation, utility regulators examine the cost of providing service, the amount of investment, the fair rate of return in comparative settings, and set rates

based upon these factors. Ameritech was seeking the alternative of price-cap regulation, which commits the company to providing services at certain set rates for basic services but eliminates regulation of the amount of profit the company may make. Ameritech, along with other telephone companies, claimed that it wanted to provide new services and that alternative regulation was a prerequisite to being able to do that.

The Ameritech case attracted twenty-five intervenors, including long distance companies, cable companies, cities and consumer representatives. The Ohio Consumers' Counsel (the official representative of Ohio residential utility customers), responded to Ameritech's application by filing a complaint against Ameritech alleging that its current rates were unjust and unreasonable and should be reduced. Other consumer parties joined that complaint. The consumer complaint and Ameritech's application were consolidated and went to a hearing in the summer of 1994. The hearing lasted 12 weeks and addressed a wide range of issues. Edgemont actively participated in the case.

With regard to universal service, Edgemont and the other low-income advocates were able to establish, through cross-examination of Ameritech's witnesses and through the presentations of their own witnesses, that service for low-income people was far from "universal" and that existing low-income telephone programs, with their very limited eligibility, benefits and passive marketing, were not helping to correct the problem in any meaningful way. They were also able to establish that access to and knowledge about computer networks was becoming more and more important to participation in the economic and political life of the country and that low-income communities had virtually no access to those networks. Without some affirmative corrective action, the witnesses testified, it was likely that the proliferation of this technology would reinforce and exacerbate existing economic and racial inequality.

In order to prevail, Ameritech needed to establish that its proposal would be in the "public interest" and that it would "impact the goal of universal service." In the absence of some significant action on universal service, Edgemont and others argued, Ameritech could not meet the standard.

This case was settled in September 1994. The settlement included rate reductions for residential customers and, on the universal service front, \$2.2 million to open 14 computer centers in low-income communities around Ohio and the establishment of the Universal Service Assistance Program (USA), a telephone subsidy program which expanded the federal "Lifeline" program in order to help low-income families get and keep phone service. This funding for Computer Centers was the first time that a State Commission had mandated that a telecommunications company fund efforts to bridge the digital divide.<sup>5</sup>

#### **IV. Merger Mania**

In 1998, Edgemont was presented with another opportunity to address these issues when SBC announced its plans to purchase Ameritech. SBC was the Baby Bell which at the time served eight primarily western states, including California and Texas. To complete the acquisition of Ameritech, SBC needed the approval of each affected state and the FCC. In July 1998 the companies filed their request for approval with the PUCO. Edgemont, along with more than a dozen other parties, immediately filed to intervene and oppose the merger.

While there were many reasons to oppose a merger which would give the combined company control of more than one third of the nation's phone lines, Edgemont knew from its own first-hand experience that the larger companies got, the farther away the headquarters were, the more competitive global ventures they engaged in, the less inclined they were to be responsive to or invest in low-income customers and communities, like the Edgemont

neighborhood.

Hearings in Ohio began in January 1999, after extensive discovery. Witnesses for Edgemont included Roger Colton, a national expert on rate and customer service issues involving telephone utilities. Colton testified about the barriers which continued to keep families from getting phone service and what policies, beyond the USA program, could help overcome those barriers. Dr. Tom Bier, a Cleveland State University professor who had extensively studied development patterns in Ohio, testified that most business, retail and residential growth was taking place in the predominantly white, relatively affluent suburbs surrounding Ohio's cities. The discovery process in this case had revealed that Ameritech targeted its infrastructure improvements and investment to precisely such high growth areas. Discovery also showed that Ameritech was test-marketing DSL service in only one location, Wheaton, Illinois, an affluent virtually all-white suburb of Chicago.

After three weeks of hearings, negotiations began. A number of parties felt that there were no conditions that could be imposed on the merger which would make it in the public interest. Edgemont was sympathetic to this viewpoint but concluded that there was enough interest in settlement by key players and the PUCO that a settlement which would be approved by the PUCO was likely. Case law in Ohio allows non-unanimous settlements of PUCO cases under certain conditions. Edgemont decided to work to ensure that universal service issues were addressed in any settlement. The case settled on February 23, 1999, and was approved by the PUCO on April 8, 1999.

The settlement included a number of consumer benefits aimed at expanding access to telecommunications technology including \$1 million more for community computer centers; \$2.25 million to create a technology access fund for rural and low income communities; and

\$2.25 million for a community education fund. In addition, the company agreed to an anti-redlining provision that would keep it from avoiding low-income urban communities when rolling out its DSL service in Ohio, and it agreed to take specific steps to increase telephone subscribership in Ohio by improving the USA program and by paying for a study of the reasons for phonelessness.<sup>6</sup>

The FCC also reviewed this merger. Edgemont (as part of a "Low Income Coalition" which included the Benton Foundation and the Community Technology Institute) filed comments in the FCC proceeding and was able to use what it learned in the Ohio hearings to improve the conditions that the FCC negotiated with the companies. While the low-income coalition was not able to convince the FCC to require technology or computer center funds throughout the thirteen-state territory of the merged company, it was able to convince the Commission to require an anti-redlining commitment and "USA type" universal service programs.<sup>7</sup>

Edgemont intervened in yet another merger case in 1999, this time the merger of Bell Atlantic and GTE to form Verizon. The GTE service territory is spread throughout Ohio, some in the Dayton area but mostly in the Southeast part of the State - Appalachian Ohio.

Edgemont presented three expert witnesses. Amy Borgstrom, the director of ACENET, an economic development organization in Appalachian Ohio, testified that much of GTE's infrastructure was not adequate for data needs and that this was a significant impediment to economic development in her part of the state. Discovery in the case had confirmed that many GTE phone lines could not accommodate modems faster than 28.8 bps and that GTE was offering DSL services only in two college towns and several fast growing upscale city suburbs. Another witness, Dennis Harrington, a legal services attorney in the GTE territory, testified that

GTE did little to promote the minimal low-income subsidy program it was required to offer by the FCC, (known as Lifeline), and that when people did call to apply for the program, they were frequently given wrong information.

At the end of the hearing the case was submitted to the PUCO for decision. On February 10, 2000, the PUCO issued an entry granting the merger but requiring the merged company to fulfill a number of conditions which included developing an expanded lifeline program and funding unspecified technology programs. The specifics were to be resolved in collaboratives involving all of the parties to the case.<sup>8</sup> While the Ohio decision was vague, the FCC issued its decision on the merger soon after and specifically mandated the anti-redlining and the lifeline program enhancements that Edgemont had previously sought from the FCC in the SBC/Ameritech merger.<sup>9</sup>

Since these cases Edgemont has intervened in a variety of other cases aimed at expanding low income access, preserving affordable rates and improving service quality.

## **V. The Remedies**

Edgemont has focused its efforts on achieving remedies that make it possible for all those who want a telephone to have one, that provide computer and internet access in communities where such access does not exist, and which limit the ability of companies to "redline" communities when investing in telecommunications infrastructure. This section more fully explores each of these areas and discusses what has been learned.

### **A. Expanding Telephone Access**

The Census Bureau and the FCC publish data on telephone subscribership by income, race, education and age. In addition, several studies have been conducted about why people do not have phones, though more research could be done on this. It is clear, however, that the vast

majority of families without phone service do not have service because they cannot afford to get it or keep it.<sup>10</sup>

Getting a phone involves paying a connection charge, in Ohio usually around \$60, and providing some form of security, usually a cash deposit equivalent to 2 1/3 months of a typical local bill (approximately \$70). In addition, people who have had a phone before but have been disconnected are required to pay or make arrangements to pay any outstanding balances. Most states still allow local phone service to be shut off when customers default on their long distance bill and consequently, in those states, customers will have to pay outstanding long distance charges before they can re-establish local service (it is not unusual for long distance arrearages to exceed \$1000).

Keeping a phone involves being able to afford the monthly bill. In Ohio, all companies are required to offer flat rate service for residential customers. Typically, for a flat rate of around \$15 per month, the customer can make and receive unlimited calls. Some companies also offer various measured rate services (a certain number of calls at a flat rate and a per call charge thereafter). A recent study by Ameritech showed that the inability to meet these basic service bills was a primary reason for loss of service.<sup>11</sup>

Of course, today, basic service is just the tip of the iceberg. Companies offer a variety of other "vertical" services - call waiting, caller ID, voice mail etc. These services are aggressively marketed individually and in packages, and it is very easy for a customer to sign up for more than he or she can afford.

Edgemont's efforts at helping people get and keep phone service have taken a number of different tacks. First, Edgemont has fought to preserve the requirement that all companies offer flat rate basic service. Flat rate service is immensely popular in Ohio; a vast majority of

subscribers choose it. It provides a fixed bill that households can budget for and removes any surprise from the local phone bill. This is particularly important for low-income families. But, flat rate service is not offered in all states and for years the phone companies in Ohio have been trying to get rid of it. So far, its popularity and the advocacy of consumer groups, including prominently the Ohio Consumers' Counsel, has preserved it.

Second, Edgemont has worked successfully with other groups to have the PUCO change its disconnection rules so that customers in Ohio can no longer have their local service disconnected when they fail to pay for long distance service. Customers seeking to re-establish local service can now only be asked to pay part or all of their local arrearages before re-establishing local service (local arrearages are seldom over \$100).<sup>12</sup>

The rule still followed in many States, which allows local disconnection for long distance bills, is a relic of the past when only one company provided everyone's local and long distance service. Since long distance service has been unbundled from local service and is offered by different companies, the rationale for the old rule no longer applies. In Ohio, the Commission agreed that it was time to unbundle the consequences for failure to pay. The FCC also agreed to change the rule, for recipients of the federal "Lifeline" subsidy program only, in its 1997 Report and Order implementing the Universal Service portion of the 1996 Telecommunications Act.<sup>13</sup> Unfortunately, the 5<sup>th</sup> Circuit Court of Appeals overturned the FCC, finding that disconnection policy is strictly a state matter and that the FCC had no jurisdiction to rule in this area.<sup>14</sup>

Third, Edgemont has worked to give customers the ability to control their bills. For instance, SBC is known for high-pressure sales tactics to sell vertical services and for bundling vertical services into packages with deceptive names like "the basics". Edgemont opposed those practices in the merger case and in subsequent complaint cases against the newly merged

company. Low-income customers, who frequently have lower education levels, are particularly vulnerable to high-pressure sales tactics. They can also least afford to be taken advantage of.

Edgemont has also opposed a new group of small phone companies, dubbed "phone sharks," which target low-income communities with local phone service that is sold at a rate usually three times the Bell rate. They are able to sell this service by marketing it through check cashing and rent-to-own stores and by implying that their service is the only way for their target audience to establish phone service. Before they can begin operating in Ohio, phone companies need to be certified by the PUCO. Edgemont, the Appalachian Peoples' Action Coalition and the Ohio Consumers' Counsel have opposed the certification of such companies and have argued that their practices are unconscionable and will undermine the goals of universal service by further impoverishing an already vulnerable population. The PUCO was sympathetic to these arguments for a number of years and issued decisions which effectively kept the sharks out of Ohio. In 2002, however, after a change in PUCO Commissioners, the PUCO opened the door to sharks. By then, however, mobile phones had become much more common and seem to have taken many of the customers would have previously been lured by the phone sharks. Nonetheless phone sharks do operate aggressively in a number of states.

Finally, Edgemont has worked to improve existing subsidy programs so they are more helpful, more accessible and better known. The Federal government has for some time provided several types of universal service subsidies – relevant here are the low-income and high cost support programs. Both types of support are paid out of pools of money which all telecommunications companies pay into. High cost support goes to subsidize service in areas where there is low density and the cost of providing service is high. It allows the cost of phone service to be reasonably comparable regardless of geography.

Federal low-income support comes in two programs, Lifeline Assistance and Link Up America, both begun in 1984. Lifeline reduces an eligible subscriber's monthly phone bill by a set amount. Link Up pays a portion of the connection charge for eligible customers. The 1997 FCC rules implementing the 1996 Telecommunication Act improved each of these programs. Lifeline now must be offered in every state and by virtually all local telephone companies. The support amount has increased. While eligibility has always been tied to receiving benefits from a qualifying benefit program, the list of qualifying programs was expanded to include Medicaid, Food Stamps, SSI, Federal public housing assistance or Section 8, and the Low Income Home Energy Assistance Program (LIHEAP).<sup>15</sup> Despite some good features, however, enrollment in these Federal programs remains low.

Edgemont and others negotiated the Universal Service Assistance (USA) Program with Ameritech before these 1997 changes in Lifeline and Link-Up. The focus then was on increasing the benefit amount for customers by requiring the company to contribute to the monthly subsidy, completely removing all up front costs and increasing eligibility.

The USA program, established as a result of the Alternative Regulation Case in 1995, did all of those things. An advisory committee, composed of representatives of the parties which signed the agreement creating USA, was also established to monitor the program and advise on its implementation.

It quickly became apparent that Ameritech was doing little to implement the program. The advisory committee documented this inaction. In 1996 the company and consumer parties signed a second agreement which enhanced the USA program by requiring the company to spend at least \$122,000 per year promoting the program (since raised to \$276,000), establish reasonable repayment plans for arrearages, and set up an 800 number and dedicated workgroup. The

Company continued to resist, so on September 4, 1997, Edgemont and other consumer parties filed a motion with the Ohio Commission to show cause why the company should not be found in violation of the USA commitment.

After extensive discovery and an evidentiary hearing that lasted six days, the Commission issued its Order which found that the company was making it hard for people to enroll in the program.

The Commission ordered Ameritech to take a number of specific steps to implement the program. Since the Commission issued this Order, enrollment has jumped significantly. Enrollment in USA now includes over 100,000 families. It was only after clear requirements related to publicity and enrollment were imposed that the program began to perform in a way that could contribute to increasing telephone penetration.

Until recently, the USA Program suffered from the fact that its eligibility is tied to existing public benefits programs. Of course, as a result of "welfare reform," enrollment in these programs has dropped. In 2002 the PUCO adopted rules which expand eligibility in Ohio to include anyone whose income is at or below 150% of poverty.

#### **B. Work to be done now to expand phone access**

To be eligible now for the Federal Lifeline program a person needs to already be enrolled in some other public benefit program.<sup>16</sup> Given reduced participation in most public benefits programs, the FCC is considering a proposal to allow eligibility based on low income in addition to participation in other benefits programs as was done in Ohio and other states.

In addition, the federal benefit is larger if states also contribute. The federal program makes an additional \$3.50 per month available to participants who live in states that also contribute. Not all states contribute. Advocates should be urging all States Commissions to

establish matching state programs to leverage this additional federal money.

Of course, as discussed above, these programs are of little use if no one knows about them. As our experience in Ohio shows, phone companies do not always facilitate enrollment. So, there is a need for advocates to monitor the companies' processes to make sure that the programs are promoted and that people are not frustrated when they attempt to enroll.

A new area that the legal service community needs to pay attention to involves cell phones. More of our clients have them all the time and for some they substitute for home phones. The FCC has been slow to adopt rules to protect consumers. For example, rules to require detailed coverage maps and other rules to allow customers to change companies while keeping their handset and phone number have been delayed repeatedly. As the FCC's process moves forward, input reflecting the low-income user's experience will be important.

The states can also have a role in cell phone regulation. While states are prohibited by federal law from regulating who can provide service and rates and charges for cell phones, in the absence of a state law limiting commission jurisdiction, state utility commissions can to adopt a variety of cell phone consumer protection rules. Some obvious issues of concern to our clients include hard to read service plans that make it almost impossible to shop for the most appropriate plan, billing that hides price increases, and limits on liability and mandatory arbitration clauses in service contracts. A recent case from the U.S. Ninth Circuit Court of Appeal gives hope that such clauses may be subject to legal challenge.<sup>17</sup> In that case the court found that similar clauses in AT&T's standard long distance contract were unconscionable and unenforceable.

### **C. Access to and Training in the Use of Computers and the Internet**

The Ameritech Alternative Regulation and SBC/Ameritech merger settlements which have provided funding for community computer centers, have allocated that funding to the Ohio

Community Computer Network (OCCN). The OCCN was originally a committee made up of parties to the Ameritech Alternative Regulation case chaired by Edgemont's representative. It grew into an independent nonprofit corporation.

The OCCN began by circulating a request for proposals, and choosing 14 applicants to receive funding to open centers. Each center was funded for 3 years, \$80,000 the first year, \$40,000 the second and \$30,000 the third. This was a bare-bones allotment which leveraged additional local resources. Working closely with a national organization, the Community Technology Centers Network (CTCNet, formerly known as the Playing to Win Network), OCCN provided intense technical support to those centers and hosted periodic meetings and conferences so centers could share experiences and "best practices". The Network soon hired part-time staff and opened itself up to include similar centers that it had not funded. The Board of the OCCN was also expanded to include representatives of member centers and others who were working in the field.

Some of the individual centers have struggled, but most have flourished and are succeeding in bringing technology access to where it has been most needed, into Ohio's low-income communities. The centers run the gamut in programming and personality. Some are at established organizations such as Urban Leagues and YMCAs. Others are part of smaller organizations like community development corporations. Some focus on adult programs, others on children. Since its inception in 1995, the OCCN has distributed over \$6 million, from telecommunications case settlements to support over 50 community computer centers.

The OCCN has also grown as a grassroots based organization with increasing capacity to assist its member groups and advocate for policies to bridge the digital divide.<sup>18</sup> It is the largest and strongest state-wide network of its type in the country.

Recent evaluations of community computer centers have shown that they work.<sup>19</sup> For the near future, at least, such centers will continue to be the place where most low income people can access telecommunications technology and be trained in its use. Even as the cost of hardware drops and more low income families are able to afford their own computers, the training component of the centers will continue to be essential. By creating dynamic training environments, centers allow residents of low income communities to become creators of content, not merely passive consumers of content created by someone else.

For those low income families who are able to afford their own equipment to connect to the Internet, the issue is likely to become the affordability of Internet access service. The FCC has begun to consider this question. It is mandated by the Telecommunications Act to periodically review which services should be eligible for universal service support. In making its determination, the FCC is mandated to “consider the extent to which such telecommunications services – a) are essential to education, public health, or public safety; b) have, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers; c) are being deployed in public telecommunications networks by telecommunications carriers; and d) are consistent with the public interest, convenience and necessity.”<sup>20</sup> When it first examined the question in 1997, the FCC found that internet access did not qualify for universal service support. A lot has changed in the past four years and as the FCC re-examines this question in 2003 this is likely to be fertile ground for advocacy.

Aside from the need to provide neighborhood-based access to telecommunications technology and to ensure affordable home internet access, it has also become clear in the last few years that many organizations that are working to solve problems related to poverty and inequality are not using computer technology very effectively in their internal operations or

implementation of their programs. In the Ameritech/SBC merger case, Edgemont negotiated a 2.25 million-dollar fund, the "Community Technology Fund," to provide resources to help such organizations better use technology.<sup>21</sup> The idea for the Ohio CTF was borrowed from a similar fund in California which began making grants in early 2000. The CTF Ohio gives out grants of \$10,000 and \$50,000 to low-income organizations. It began making grants in 2000 and now, as of 2003 has funded projects for 106 such organizations.

#### **D. Infrastructure Redlining**

To the extent that market principles are allowed to drive infrastructure investment decisions, it should be no surprise that low-income communities are the last to see that investment. As Edgemont's discovery showed in 1999 and the FCC confirmed in 2000 that is what was happening.

The effect is to erect another barrier to economic development for the inner city and rural areas. Amy Borgstrom from ACENET testified in the GTE merger case that telecommunications based businesses had great potential for reversing the historic underdevelopment of the area in which she worked. Further, as broadband services in the home become more widely desired, lack of access will be one more strike against inner cities and rural areas.

The law would seem to preclude just this sort of discrimination. Section 254 (b)(2) of the 1996 Telecommunications Act provides that "Access to advanced telecommunications and information services should be provided in all regions of the Nation."<sup>22</sup> Section 254 (b)(3) provides, "Consumers in all regions of the Nation, including low-income consumers and those in rural, insular and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are

available at rates that are reasonably comparable to rates charged for similar services in urban areas.”<sup>23</sup> Section 706 of the Act directs the FCC and each state Commission to encourage the deployment of advanced telecommunications capability on a reasonable and timely basis to all Americans and the FCC is directed to periodically study the matter.<sup>24</sup> Even the “purpose” section of the Act had anti-discrimination language added to it in 1996.

To date, however, regulatory bodies have been slow to act on their own.

Edgemont first tried to address this issue in the SBA/Ameritech merger case. The remedy Edgemont was able to negotiate in that case addressed redlining by requiring that for five years after the merger, at least 10% of the central offices receiving DSL or DSL type services had to be offices in large urban areas which had relatively large numbers of low income households (approximately 10% of the central offices in Ohio fit this description).<sup>25</sup>

This requirement is an important first step but it could have been strengthened by the inclusion of low income rural central offices, by applying the commitment to all broadband technologies, and by keeping it in place for longer than five years.

In fact, in Edgemont’s estimation, an even more effective way of ensuring that the benefits of broadband technologies are made widely and equitably available would be by requiring that any time a broadband service is made available to any customer in a defined area, that it also be made available to all customers in that area within a reasonable time period. The “defined areas” would be drawn so that each included high growth and wealthy areas, along with low income and low growth areas.

As the FCC’s Reports show, infrastructure redlining has continued. Each state commission should collect the type of data that would allow advocates to understand exactly what is happening in their State.

### **E. Opportunities To Expand Access To The Internet**

When telecommunications companies file cases before State Commissions the question of how they are serving the public interest and universal service will frequently be on the table. Opportunities still exist to intervene in such cases, though in some states, utility commissions and legislators are taking steps to further deregulate and remove or dilute the public interest obligation. Advocates need to pay attention to such moves.

While some legislature's maybe pondering bills that remove opportunities for overcoming the digital divide, there are also a few bright spots that point to opportunities for proactive legislative advocacy. Illinois recently passed a law that dedicates a portion of any penalty money collected by the utility commission for telecommunications rules violations to low-income computer centers.<sup>26</sup> A similar bill is being drafted in Ohio.

Opportunities also exist at the local level with cable franchises. All cable companies have franchises with municipalities. Those franchises are renewed periodically and typically a municipal charter will require city counsel approval of any transfer of the franchise.

In Cleveland in 2002 the cable system was sold and, at the urging of low-income advocates, the city was able to get the buyer to provide three million dollars for a fund to create computer centers in low-income neighborhoods as part of the franchise transfer negotiations.

Computer centers of the type funded by utility commission settlements or franchise commitments have become a wide-spread way of providing access and training in computer use in low-income neighborhoods. Those centers can always use legal help getting established and negotiating and enforcing contracts.

Also, at the federal level, two important programs are annually under threat. The

Technology Opportunities Program (TOP) is always fighting for its life. TOP has funded many innovative programs. A newer program, the CTC program at the Department of Education funds efforts to link schools and community computing programs. It is also under periodic threat. [Digitalempowerment.org](http://Digitalempowerment.org) is leading the fight to save this program.

## **VI. Lessons Learned**

Cases like those described above are important forums for the fashioning of telecommunications policy and it is critical that low-income communities and customers be represented in these cases. The challenges and difficulties are not hard to see:

- a) In each of these cases there are dozens of interlocking issues. Organizations which intervene in these cases will need to make sure that in exchange for achieving some benefit for a narrow constituency they are not helping to bring about some broad negative impact. For instance, achieving an increased lifeline discount at the expense of price increases or reduced oversight of service quality would be self-defeating. This is where coalitions are particularly helpful. Traditional consumer organizations and state consumer advocates will have expertise and experience with rate, service quality, and many other issues.
- b) Many times the opportunities to raise these issues will emerge when a company files for permission to do something. Advocates need a way of knowing about these filings and need to be prepared to respond in a timely way.
- c) Attorneys for community organizations will need to make a record that supports their positions by sponsoring knowledgeable and credible witnesses and by cross examining company witnesses. While Edgemont has on some occasions used national experts, it has also had success using local people who have studied or have first hand knowledge of an issue. Even if the case ultimately settles, such efforts will lay the groundwork for beneficial

negotiated remedies.

- d) Small community organizations need to allocate their resources wisely. It may not be difficult to get into a case but in order to keep up with the case it will be necessary to use limited resources in a strategic way. It may also be necessary to find special funding for this work. The Legal Aid Society of Dayton was able to get funding from the local United Way for its Telephone and Technology Access project.
- e) It is important to keep an eye on the interplay between state and Federal cases and dockets. Discovery, settlements or orders in one forum can often be used fruitfully in the other. In 2003 at least two issues important to low income communities, income-based eligibility for Lifeline services and universal service support for Internet service are up for consideration by the FCC.
- f) Building alliances is key. Coalitions provide horsepower and credibility and keep in check everyone's opportunistic leanings. Natural allies are community organizations, consumer advocacy groups, state consumer advocates, civil rights organizations, and neglected towns and cities. Unnatural allies may sometimes include competing phone companies or business trade groups. Some of the allies Edgemont has worked with include the Ohio Consumers' Counsel, the American Association for Retired Persons, welfare rights organizations, community development corporations, and cities.
- g) Follow-up is also essential. Despite Commission orders, companies will resist delivering benefits if they cost them money or require them to change the way they do business, (as Ameritech did with the USA program). Advocates will need to carefully document compliance. Where possible, responsibility for compliance should be taken out of the company's hands (as was done with the OCCN).

h) Finally, as telecommunications companies merge and become larger they truly become more formidable. They wield more influence than ever with governors, legislators, commissioners, the media and even sometimes with community and consumer organizations. They are less concerned with violating the rules or orders of a single state, are quicker to seek legislative favors if they cannot get what they want from a Commission, and are less easily shamed by unhappy customers or by local press coverage. This trend raises some interesting questions about what it will take to be an effective advocate in the future.

While these difficulties are real, so are the benefits. Instead of only fighting defensive battles for clients, in this arena public interest advocates can impact policy as it is being written. More importantly, clients will draw a sense of power from their involvement and they will see concrete benefits in their communities.

April 30, 2003

**Ellis Jacobs is a Managing Attorney at the Legal Aid Society of Dayton. He is the attorney for the Edgemont Neighborhood Coalition, and is the Board Chair of the CTF Ohio and a board member of the OCCN. He can be reached at: 333 West First Street, Suite 500, Dayton, OH 45402-3042; (937) 228-8088, ext. 111; [ellis@daytonlegalaid.org](mailto:ellis@daytonlegalaid.org). This article is an expanded and updated version of an article by Ellis Jacobs in Volume VIII, Number 1, Georgetown Journal on Poverty Law & Policy, "Fighting to Turn the Promise of Universal Telecommunications Service into Reality: The Experience of One Community Organization in Ohio."**

#### Footnotes

---

<sup>1</sup> A Nation Online: How Americans are Expanding Their Use of the Internet, U.S. Department of Commerce, National Telecommunications Information Administration, February 2002, <http://www.ntia.doc.gov/ntiahome/dn/html/anationonline2.htm>

<sup>2</sup> Deployment of Advanced Telecommunication Capability: Third Report, Federal Communications Commission, February 7, 2002, <http://www.fccgov/broadband>

<sup>3</sup> Deployment of Advanced Telecommunications Capability: Second Report, Federal Communications Commission, August 3, 2000, <http://www.fcc.gov/broadband>

<sup>4</sup> 47 U.S.C. §151.

---

<sup>5</sup> In the Matter of the Application of Ameritech Ohio for Approval of an Alternative Form of Regulation, Case No. 93-487-TP-ALT, Public Utilities Commission of Ohio, Opinion and Order, November 23, 1994.

<sup>6</sup> In the Matter of the Joint Application of SBC Communication Inc., SBC Delaware Inc., Ameritech Corporation, and Ameritech Ohio for Consent and Approval of a Change of Control, Case No. 98-1082-TP-AMT, Public Utilities Commission of Ohio, Order and Entry, April 8, 1999.

<sup>7</sup> In re Application of Ameritech Corporation and SBC Communications Inc. for Consent to Transfer Control of Corporation Holding Commission Licenses and Lines, CC Docket No. 98-141, Federal Communications Commission, Memorandum Opinion and Order, October 6, 1999.

<sup>8</sup> In the Matter of the Joint Application of Bell Atlantic Corporation and GTE Corporation for Consent and Approval of a Change in Control, Case No. 98-1398-TP-AMT, Public Utilities Commission of Ohio, Opinion and Order, February 10, 2000.

<sup>9</sup> In the Matter of GTE Corporation and Bell Atlantic Corporation for Consent to Transfer of Control, CC Docket No. 98-184, Federal Communications Commission, Memorandum Opinion and Order, June 16, 2000.

<sup>10</sup> Preparation for Addressing Universal Services Issues: A Review of Current Interstate Support Mechanisms, Universal Service Task Force, Federal Communication Commission, February 23, 1996 at p. 11-12.

<sup>11</sup> Phoneless Household Research Study, Summary of Ameritech Findings, August 1996, Prepared by Strategic Marketing and Research, Inc. for Ameritech Inc., at 65. In this study the most frequently cited “very important” reason for doing without telephone service was “can’t afford basic service”, followed by “can’t afford full service”.

<sup>12</sup> In the Matter of the Commission Investigation into the Disconnection of Local Telephone Service for Non-payment of Charges Associated with Telephone Services Other Than Local Telephone Service, Case No. 95-790-TP-COI, Public Utilities Commission of Ohio, Entry on Rehearing, October 16, 1996.

<sup>13</sup> In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Federal Communication Commission, Report and Order, May 8, 1997, at ¶ 390.

<sup>14</sup> Texas Office of Public Utility Council v. FCC, 183 F.3d 393 (5<sup>th</sup> Cir. 1999).

<sup>15</sup> In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Federal Communication Commission, Report and Order, May 8, 1997, at ¶ 374.

<sup>16</sup> In re Federal-State Board on Universal Service, CC Docket No. 96-45, [www.fcc.gov/cgb/consumerfacts/lowincome.html](http://www.fcc.gov/cgb/consumerfacts/lowincome.html).

<sup>17</sup> Ting v. AT&T, 9<sup>th</sup> Cir. Ct. App., No. 02-15416 (Feb. 11, 2003)

<sup>18</sup> In the Matter of the Application of the Ohio Bell Telephone Company for Approval of an Alternative Form of Regulation, Case No. 93-487-TP-ALT, Public Utilities Commission of Ohio, Report on the Implementation of the Community Computer Center Commitment in the Ameritech Alternative Regulation Settlement, May 4, 1998; Final Report on the Implementation of the Community Computer Center Commitment in the Ameritech Alternative Regulation Settlement of November 23, 1994, March 17, 2000.

<sup>19</sup> Who Goes There? Longitudinal Case Studies of Twelve Users of Community Technology Centers (Chow, Ellis, Walker, Wise, 2000) [www.ctcnet.org/longrep3.doc](http://www.ctcnet.org/longrep3.doc); Impact of CTCNet Affiliates, Findings From a National Survey of Users of Community Technology Centers, (Chow, Ellis Mark, Wise, 1998) [www.ctcnet.org/impact98.html](http://www.ctcnet.org/impact98.html); Community Technology Centers: Impact on Individual Participants and Their Communities (Mark, Comebise, Wahl, 1997) [www.ctcnet.org/eval.html](http://www.ctcnet.org/eval.html). All three reports were prepared by Educational Development Center, Inc. and supported by National Science Foundation Grants.

<sup>20</sup> 47 U.S.C. 254©(1)

---

<sup>21</sup> In the Matter of the Joint Application of SBC Communications Inc., SBC Delaware Inc., Ameritech Corporation, and Ameritech Ohio for Consent and Approval of a Change of Control, Case No. 98-1082-TP-AMT, Public Utilities Commission of Ohio, Order and Entry, April 8, 1999.

<sup>22</sup> 47 U.S.C. 254(b)(2)

<sup>23</sup> 47 U.S.C. 254 (b)(3)

<sup>24</sup> 47 U.S.C. 706

<sup>25</sup> In the Matter of the Joint Application of SBC Communication Inc., SBC Delaware Inc., Ameritech Corporation, and Ameritech Ohio for Consent and Approval of a Change of Control, Case No. 98-1082-TP-AMT, Public Utilities Commission of Ohio, Order and Entry, April 8, 1999.

<sup>26</sup> 30 ILCS 780 Article 5.